

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 100504-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

Issued and entered
this 30th day of December 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 30, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on October 7, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on October 16, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate). Rider CBD \$1,000 NP "Community Blue Deductible Requirement \$1,000 For Nonpanel Services" (the rider) also applies. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

Under the terms of the Petitioner's health care coverage, there is no deductible when covered services are received from "panel providers," i.e., certain health care professionals and facilities who have agreed to provide services to BCBSM members under the certificate. Services received from nonpanel providers are generally subject to a deductible and copayment.

The Petitioner was admitted at XXXXX Health Systems on January 7, 2008, for treatment of blood clots in his left leg, and was discharged on January 11, 2008. While in the hospital the Petitioner received medical care provided by Dr. XXXXX, a nonpanel doctor. All hospital bills and other professional services were paid by BCBSM except for the services of Dr. XXXXX. The approved amount for his services was applied to the Petitioner's \$1,000.00 annual nonpanel deductible.

The Petitioner appealed BCBSM's decision to apply the approved amounts for Dr. XXXXX's care to the nonpanel deductible. BCBSM held a managerial-level conference on July 22, 2008, and issued a final adverse determination dated August 4, 2008.

III ISSUE

Did BCBSM correctly apply the nonpanel deductible to Petitioner's care?

IV ANALYSIS

Petitioner's Argument

The Petitioner says he was admitted to the hospital for an emergent condition and that Dr. XXXXX was the only doctor on call. The Petitioner asked about being transferred to the hospital where his primary doctor works but says it was not considered, even in an ambulance -- the doctors were concerned about his clots moving if he had to travel on a bumpy road.

The Petitioner says he was admitted as an inpatient right after he arrived at the hospital.

His leg was isolated and an IV of the anti-coagulant Heparin was started. He remained in the hospital until the blood reached the proper therapeutic range and then he was released.

The Petitioner noted that BCBSM indicated that he was stable enough to find a panel doctor upon admittance to the hospital. However, the Petitioner believes there was no time to find a panel doctor because the Heparin did not work initially and there was concern the clots would move. Once he was in the safe therapeutic range he was released from the hospital and went to his primary care doctor for the rest of his treatment.

The Petitioner argues that BCBSM should waive his nonpanel deductible since his condition was an emergency and no other doctor was available.

BCBSM's Argument

BCBSM says that the rider amends the certificate which provides for a \$1,000.00 deductible for services provided by a nonpanel doctor. There are four circumstances where nonpanel cost sharing requirements are waived:

- A panel provider refers a member to a non panel provider
- The member receives a service for the initial exam to treat a medical emergency or accidental injury in the outpatient department of a hospital; urgent care center or physician's office
- The member receives services from a provider for which there is no PPO panel provider
- The member receives services from a nonpanel provider in a geographic area of Michigan deemed a "low access area" by BCBSM for the particular specialty.

BCBSM indicates that the following amounts were approved for Dr. Tehrani's services:

Date of Service	Amount Charged by Dr. Tehrani	BCBSM's Approved Amount	Amount Applied to Nonpanel Deductible
1/07/08	\$330.00	\$143.57	\$143.57
1/08/08	\$165.00	\$103.65	\$103.65
1/09/08	\$165.00	\$103.65	\$103.65
1/10/08	\$165.00	\$103.65	\$103.65
1/11/08	\$200.00	\$131.19	\$131.19
Totals	\$1,025.00	\$585.71	\$585.71

While the Petitioner believes that no nonpanel sanction should have been applied because the services were for a medical emergency, BCBSM says the nonpanel sanction is only waived for the initial examination for a medical emergency in the outpatient department of a hospital. The care provided the Petitioner by Dr. XXXXX was not the initial treatment and was provided while the Petitioner was an inpatient in the hospital. Therefore, the \$585.71 that BCBSM approved for Dr. XXXXX's services was applied toward the nonpanel deductible. Since Dr. XXXXX participates with BCBSM's traditional program he has agreed to accept the \$585.71 approved amount as payment in full for the Petitioner's care.

BCBSM believes it processed the Petitioner's claims in accordance to the terms of the certificate.

Commissioner's Review

The certificate and rider require the Petitioner to satisfy a \$1,000.00 deductible when nonpanel providers are used. The certificate also says that the nonpanel deductible will apply unless the services fall under one of four circumstances described above.

The Petitioner argues that since his care was for an emergency, no sanction should have been applied. However, the emergency waiver in the certificate applies only to the initial examination to treat the emergency in the outpatient setting. The sanctions are not waived for subsequent inpatient care in the hospital. BCBSM properly applied its \$585.71 approved amount for the care provided by Dr. XXXXX to the nonpanel deductible since he is a nonpanel provider and the care was provided while the Petitioner was an inpatient in the hospital.

The Commissioner finds that BCBSM is not required to waive the sanctions applied to the Petitioner's care since they were not part of the initial examination to treat the Petitioner's medical emergency in the outpatient department of the hospital and the Petitioner has not argued that any of the other waiver circumstances apply.

**V
ORDER**

BCBSM's final adverse determination of August 4, 2008, is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.